

**JUDICIAL INTERFERENCE WITH PARENTAL AUTHORITY:
A COMPARATIVE ANALYSIS OF CHILD PROTECTION MEASURES**

by

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Abstract

Since parental authority in South African law is based on German customary law, and not on Roman law, it exists for the protection of the child. Various protective measures exist to ensure that this goal is reached, mainly in the form of judicial interference with parental authority. An example is the termination of parental authority, or some of its incidents, by means of a court order. This takes place either in terms of the common-law authority of the High Court, or in terms of certain statutory provisions. One of the statutory provisions in terms of which the children's court can terminate some of the incidents of parental authority, is the Child Care Act 74 of 1983. If the children's court is of the opinion that a child is in need of care, it can order that the child be returned to the custody of its parents, or that the child be placed in foster care, or in a children's home or school of industries. There is at present no mechanism in the Child Care Act for ensuring legal representation for children. The draft Children's Bill expands the possible orders that the children's court can make and further provides that a child is entitled to legal representation in children's court proceedings, if necessary at state expense. In New Zealand, families participate in decision-making regarding children in need of care by means of the family group conference. In Scotland, children in need of compulsory measures of supervision are dealt with by a lay tribunal known as the children's hearing. The global movement to recognise and protect both the welfare and autonomy rights of children formed the basis of international-law protection of children, and the children's clause contained in section 28 of the Constitution of the Republic of South Africa 108 of 1996. In order to ensure that the protective goal of child law is reached, I propose that a multidisciplinary lay tribunal be instituted in South Africa to deal with children in need of care, and that legal representation for children in children's court proceedings be made compulsory in certain circumstances.

Key terms

Parental authority; Parent-child relationship; Parental responsibilities; Judicial interference; State intervention; Child protection; Children's rights; Constitutional protection of children; Protection of children in international law.